APPEAL NO. 161476
FILED SEPTEMBER 7, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on June 6, 2016, in San Antonio, Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that the compensable injury of [(date of injury)], extends to a right leg sprain/strain, cervical sprain/strain, lumbar sprain/strain, bilateral ulnar abutment syndrome with triangular fibrocartilage complex (TFCC), depression and anxiety but does not extend to de Quervain's syndrome, a right ECU split or post-traumatic stress disorder (PTSD). The hearing officer further determined that, as certified by (Dr. K), a referral of the treating doctor, the respondent/cross-appellant (claimant) has not reached maximum medical improvement (MMI) and, for such reason, no impairment rating (IR) can be assigned.

The appellant/cross-respondent (carrier) appealed the hearing officer's decision that the compensable injury extends to a right leg sprain/strain, cervical sprain/strain, lumbar sprain/strain, bilateral ulnar abutment syndrome with TFCC, depression and anxiety and that the claimant had not reached MMI, arguing that such decision is contrary to the great weight and preponderance of the evidence. The carrier further urged that the hearing officer erred in failing to make findings of fact and conclusions of law regarding the opinions of the designated doctor. The claimant appealed the hearing officer's determination that the compensable injury does not extend to de Quervain's syndrome, a right ECU split or PTSD as being contrary to the great weight and preponderance of the evidence.

The hearing officer's determination that the compensable injury extends to a right leg sprain/strain, cervical sprain/strain and lumbar sprain/strain was not appealed and has become final pursuant to Section 410.169; however, we note an incorrect date of injury is listed in Conclusion of Law No. 3 as discussed below.

DECISION

Affirmed as reformed in part and reversed and remanded in part.

The claimant was injured on (date of injury), when the tractor-trailer he was driving rear ended another tractor-trailer. The parties stipulated that the claimant sustained a compensable injury in the form of a right shoulder contusion, right lower leg contusion, bilateral shoulder sprain/strain, bilateral elbow sprain/strain, bilateral wrist sprain/strain, chest contusion and head injury. The parties further stipulated that C5-6

disc pathology, C6-7 disc pathology and bilateral tendinitis are not related to the compensable injury.

EXTENT OF INJURY

The hearing officer's determinations that the compensable injury of [(date of injury)], extends to bilateral ulnar abutment syndrome with TFCC, anxiety and depression but does not extend to de Quervain's syndrome, a right ECU split or PTSD are supported by sufficient evidence and are affirmed. The fact that another fact finder may have drawn different inferences from the evidence which would have supported a different result does not provide a basis for us to disturb the challenged determination. *Salazar v. Hill*, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi, 1977, writ ref'd n.r.e.).

We note that Conclusion of Law No. 3, Conclusion of Law No. 4, the Decision section and the first paragraph of the Decision and Order contain errors in that each lists the date of the compensable injury as August 29, 2014, rather than (date of injury), as listed in Issue No. 1 as revised by agreement of the parties and the findings of fact. Accordingly, we reform Conclusion of Law No. 3 to conform to the evidence and Finding of Fact No. 4 as follows:

> The compensable injury of (date of injury), extends to a right leg sprain/strain, cervical sprain/strain, lumbar sprain/strain, bilateral ulnar abutment syndrome with TFCC, anxiety, and depression.

We reform Conclusion of Law No. 4 to conform to the evidence and Finding of Fact No. 5 as follows:

> The compensable injury of (date of injury), does not extend to de Quervain's syndrome, a right ECU split, or PTSD.

We reform the Decision section to conform to the evidence and Finding of Fact Nos. 4 and 5 as follows:

> The compensable injury of (date of injury), extends to a right leg sprain/strain, cervical sprain/strain, lumbar sprain/strain, bilateral ulnar abutment syndrome with TFCC, depression, and anxiety; the compensable injury of (date of injury), does not extend to de Quervain's syndrome, a right ECU split, or PTSD; and the claimant has not reached MMI, and no [IR] is assigned.

Finally, we reform the first paragraph of the Decision and Order to conform to the evidence and Finding of Fact Nos. 4 and 5 as follows:

> This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation [(Division)]. For the reasons discussed herein, the [h]earing [o]fficer determines that the compensable injury of (date of injury), extends to a right leg sprain/strain, cervical sprain/strain, lumbar sprain/strain, bilateral ulnar abutment syndrome with [TFCC], depression, and anxiety; the compensable injury of (date of injury), does not extend to de Quervain's syndrome, a right ECU split, or [PTSD]; [the] [c]laimant has not reached MMI, and no [IR] is assigned.

MMI/IR

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Division shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary. Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

The hearing officer based his determination that the claimant had not attained MMI on the certification of Dr. K, who examined the claimant on March 10, 2016, and determined that the claimant had not reached MMI with regard to the disputed conditions. In his report Dr. K considered the claimant's failed conservative care for de Quervain's syndrome, a condition found by the hearing officer not to be related to the compensable injury. For such reason, the hearing officer erred in adopting Dr. K's certification and we accordingly reverse the hearing officer's determination that the claimant has not reached MMI. Dr. K issued two alternate certifications, one of which considers only a right shoulder contusion and right lower leg contusion and another which also includes de Quervain's syndrome. Because neither of Dr. K's alternate certifications include the conditions found by the hearing officer to be compensable and only those conditions, neither can be adopted.

There are six other certifications of MMI/IR in evidence. (Dr. S), the designated doctor appointed by the Division, examined the claimant on November 12, 2015, and determined that the claimant reached MMI on March 24, 2015, with a zero percent IR with regard to a right shoulder contusion and right lower leg contusion. In an alternate certification which did not consider ulnar abutment syndrome but did include PTSD, Dr. S determined that the claimant had not reached MMI. Because neither of Dr. S's certifications include the conditions found by the hearing officer to be compensable and only those conditions, neither can be adopted.

(Dr. D), the post-designated doctor required medical examination doctor selected by the carrier, issued four alternate certifications. One considers only a right shoulder contusion and right lower leg contusion, one considers all claimed but disputed conditions, including de Quervain's syndrome and a right ECU split, and the remaining two fail to consider bilateral ulnar abutment syndrome with TFCC. Because none of Dr. D's certifications include the conditions found by the hearing officer to be compensable and only those conditions, none can be adopted.

Since there is no certification in evidence that can be adopted, we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

SUMMARY

We reform Conclusion of Law No. 3 of the Decision and Order to conform to the evidence and Finding of Fact No. 4 as follows:

> The compensable injury of (date of injury), extends to a right leg sprain/strain, cervical sprain/strain, lumbar sprain/strain, bilateral ulnar abutment syndrome with TFCC, anxiety, and depression.

We reform Conclusion of Law No. 4 of the Decision and Order to conform to the evidence and Finding of Fact No. 5 as follows:

> The compensable injury of (date of injury), does not extend to de Quervain's syndrome, a right ECU split, or PTSD.

We reform the Decision section of the Decision and Order to conform to the evidence and Finding of Fact Nos. 4 and 5 as follows:

> The compensable injury of (date of injury), extends to a right leg sprain/strain, cervical sprain/strain, lumbar sprain/strain, bilateral ulnar abutment syndrome with TFCC, depression, and anxiety; the

compensable injury of (date of injury), does not extend to de Quervain's syndrome, a right ECU split, or PTSD; and the claimant has not reached MMI, and no [IR] is assigned.

We reform the first paragraph of the Decision and Order to conform to the evidence and Finding of Fact Nos. 4 and 5 as follows:

> This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the [Division]. For the reasons discussed herein, the [h]earing [o]fficer determines that the compensable injury of (date of injury), extends to a right leg sprain/strain, cervical sprain/strain, lumbar sprain/strain, bilateral ulnar abutment syndrome with TFCC, depression, and anxiety; the compensable injury of (date of injury), does not extend to de Quervain's syndrome, a right ECU split, or [PTSD]; [the] [c]laimant has not reached MMI, and no [IR] is assigned.

We affirm the hearing officer's determination that the compensable injury of (date of injury), extends to a right leg sprain/strain, cervical sprain/strain, lumbar sprain/strain, bilateral ulnar abutment syndrome with TFCC, depression and anxiety but does not extend to de Quervain's syndrome, a right ECU split or PTSD.

We reverse the hearing officer's determination that the claimant has not reached MMI and remand the issues of MMI/IR to the hearing officer.

REMAND INSTRUCTIONS

Dr. S is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. S is still qualified and available to be the designated doctor. If Dr. S is no longer qualified or is not available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI/IR for the (date of injury), compensable injury.

The hearing officer is to instruct the designated doctor that the compensable injury of (date of injury), extends to a right shoulder contusion, right lower leg contusion, bilateral shoulder sprain/strain, bilateral elbow sprain/strain, bilateral wrist sprain/strain, chest contusion, head injury, right leg sprain/strain, cervical sprain/strain, lumbar sprain/strain, bilateral ulnar abutment syndrome with TFCC, depression and anxiety but does not extend to de Quervain's syndrome, a right ECU split, PTSD, C5-6 disc pathology, C6-7 disc pathology or bilateral tendinitis. The hearing officer should request that the designated doctor give an opinion on MMI and IR of the entire compensable injury based on the claimant's condition as of the MMI date certified, considering the medical record and the certifying examination in accordance with Rule 130.1(c)(3) and

the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides).

The parties are to be provided with the designated doctor's new certification of MMI and assignment of IR and are to be allowed an opportunity to respond. The hearing officer is then to make a determination concerning MMI/IR consistent with the evidence and this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **HDI-GERLING AMERICA INSURANCE COMPANY** and the name and address of its registered agent for service of process is

PRENTICE-HALL C SYSTEM INC.
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.

K. Eugene Kraft
Appeals Judge

CONCUR:

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge